

In the Matter of Merchant Mariner's Document No. Z-1087219 and all
other Seaman Documents
Issued to: Santos Roman

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1346

Santos Roman

This appeal has been taken in accordance with Title 46 U. S.
Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 8 May 1962 an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The single specification alleges that while serving as tourist-class elevator operator on board the SS UNITED STATES under authority of the above described document, on 17 July 1961, Appellant wrongfully molested a female passenger of tender years, one named Margaret Seeauer, by kissing her and by placing his hands upon her person under her dress.

At the hearing Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choosing. He entered a plea of not guilty to the charge and specification.

The Investigating Officer made an opening statement following which the Examiner granted the Investigating Officer's request to take deposition of Margaret Seeauer and her mother Mrs. Ester Seeauer. The Appellant's counsel was present at the taking of these depositions which were later offered in evidence by the Investigating Officer. The Investigating Officer also introduced as witness Mr. Montague Banks, junior assistant purser, Mr. Garland Patton, tourist class chief steward, and Mr. E. Kuether, second steward. All persons served on board the SS UNITED STATES at the time of the alleged incident.

Appellant submitted into evidence the deposition of Mr. Raymond Grady, Field Representative of the National Maritime Union. Father Hugh Fitzgerald of St. Michael's Church, Jersey City, N. J., and Kenneth Grady, bell boy on the SS UNITED STATES at the time of the alleged incident, testified as witnesses on the Appellant's behalf. The Appellant exercised his privilege of not taking the stand.

At the conclusion of the hearing, the oral argument of the Investigating Officer and Appellant's Counsel were heard by the Examiner. Both parties were given an opportunity to submit proposed findings and conclusions to the Examiner. The Examiner in his decision found that the charge and specification had been proved. He entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 17 July 1961, Appellant served as tourist-class elevator operator under the authority of his Merchant Mariner's Document No. Z-1087219 aboard the SS UNITED STATES, a merchant vessel of the United States, while the ship was at sea.

On 17 July 1961, at or about 1600 hours, Margaret Seeauer, a ten and one-half year old female passenger, boarded the tourist-class elevator nearest to her family's cabin on "A" deck. This elevator was operated by Appellant from 0800 to 1200, 1500 to 1700 and 1900 to 2100. The girl was alone in the elevator with Appellant. She asked that he take her to the promenade deck, which was two decks above the "A" deck. The Appellant, however, caused the elevator to descend and during its passage kissed Margaret Seeauer on the face three times. Thereafter, Appellant picked up a passenger and told Margaret Seeauer to remain in a corner of the elevator. After the passenger was discharged Appellant placed his hands upon Margaret Seeauer's person under her dress. Appellant then informed her not to describe this incident to her parents.

After Margaret Seeauer left the elevator she returned to the cabin occupied by her and her parents and told her mother about the incident. The girl described the man as the operator of the nearest elevator. Mrs. Seeauer went out and confirmed the indications that the operator on duty was the Appellant. Mr. Montague Banks, a junior assistant purser was then notified.

Margaret Seeauer described and identified Appellant as her molester to Mr. Montague Banks, and later to the Executive Officer of the ship. While Mr. Banks was still in the Seeauer's room, Appellant stuck his head in the room and asked what was going on. The girl recognized him as the guilty person. Appellant was the operator of the elevator in question when he was relieved of his duties at about 1630 as a result of this incident.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. It urges that the order be reversed on grounds that the identification of Appellant as the perpetrator of the alleged act was improper, that the decision of the Examiner was rendered contrary to the weight of the evidence, and that the corroborating witness, Mr. Montague Banks, was lying.

APPEARANCE: Zwerling & Zwerling, by Irving Zwerling of New York, New York.

OPINION

Appellant's basic contention is that he was not properly identified as the perpetrator of the alleged act. The essence of his argument suggests that since there was not a so-called "line up" when the identification took place, Appellant's identification was improper. He further contends that the other elevator operators working the tourist-class elevators should have been placed along side of him and only then should Margaret Seeauer have been permitted to make an identification. To support his argument, Appellant relies on Commandant's Appeal No. 829 which was dismissed because the identification of the perpetrator was limited to the sound of a man's voice. The alleged victim did not clearly see her molester, and the deck where the incident occurred was dark at the time. The situation is different in the present case since the deposition evidence of Margaret Seeauer, which to a certain degree is corroborated by her mother, clearly indicates that Margaret Seeauer definitely recognized Appellant as her molester. Margaret Seeauer had spoken to Appellant several times a day for several days prior to the incident as she was in the habit of using the nearest elevator to reach the promenade deck. At the time the incident took place Margaret Seeauer was but several feet from Appellant. There is no evidence that the elevator was unlighted or that any peculiar circumstances prevented her from seeing his face. Appellant was the scheduled operator at this time and he was on duty when relieved at approximately 1630. On the other hand, there is no evidence that he was not on duty when this incident occurred. Under these facts it would be rather useless to go through the merchants of a "line up", and therefore the fact of its omission is not significant here.

Appellant in his brief also contends that the testimony of a ten and one-half year old child is subject to the closest scrutiny and if uncorroborated should not be accepted. While it is true that in some cases dealing with sexual offenses children of tender ages have had a tendency to be overimaginative and generally unreliable, the record in this case shows nothing in the testimony of Margaret Seeauer which could be construed as being tainted with imagination or fantasy. The situation presented here is far different from that found in Commandant's Appeal No. 1168, also

relied on by Appellant. In that case the decision of the Examiner was reversed by reason of inconsistencies and contradictions concerning the testimony of the infant alleged to have been molested. There are no inconsistencies or contradictions in Margaret Seeauer's testimony. Her description of the circumstances surrounding the incident is clear, consistent and unyielding. There is also no evidence whatsoever in the record to support Appellant's allegation that Margaret Seeauer was schooled or rehearsed in her testimony by her mother. As a matter of fact there is evidence in the record that indicates that both Mrs. Seeauer and Margaret tried to refrain from talking about the incident as much as possible.

Appellant's remaining two grounds of appeal can be disposed of summarily.

It is the Commandant's policy to attach great weight to an Examiner's findings insofar as they are based upon his determinations as to the credibility of witnesses. See Commandant's Appeal No. 829. Only when the clear preponderance of all the relevant circumstances show the Examiner's findings as incorrect, will the Commandant look into the credibility of witnesses. In view of the fact that the testimony of all other witnesses produced on behalf of the government corroborated in material respects the testimony of Mr. Montague Banks, it is immaterial what type of personality he has. There is no evidence, aside from the deposition of Mr. Raymond Grady, whose personal opinion captioned Mr. Banks as "liar" and "extrovert", that Mr. Banks was not telling the truth in this instance.

It is clear from the foregoing discussion, that the government carried its burden of proof, that the Examiner's decision was not rendered against the weight of the evidence, and that the Examiner's findings are supported by reliable, probative and substantial evidence.

ORDER

The order of the Examiner dated at New York, New York, on 8 May 1962, is AFFIRMED.

D. McG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D, C., this 8th day of October 1962.